

REMARKS

Claims 1-6, 12-14, 16, 18-21, 27-32, 36, 38-41 and 43 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Deal, published patent application US 2005/0044011 A1, in view of "www.Lowes.com", which was cited as disclosing a system for buying home improvement tools and services online, including providing instructions on performing home improvement projects including installing tile or stone with the phases involved. In the response dated October 25, 2006, concerning the §103(a) rejection of Claims 1-6, 12-14, 16, 18-21, 27-32, 36, 38-41 and 43 over Deal in view of "www.Lowes.com", Applicants submitted a Declaration under 37 CFR §1.131 which indicated that the system and method for selling products in a home improvement or commercial construction store, including an interactive display with a visual display for disseminating information in response to requests by a user, particularly regarding installing tile or stone, and wherein the information is coordinated with the grouping of the seller's products on the shelves of the store, as is recited in the claims, was conceived prior to August 22, 2003. Exhibit A to the Declaration was submitted as evidence of conception prior to August 22, 2003.

The Examiner indicated in the Advisory Action of November 28, 2006, that the "affidavit or other evidence filed" was not entered for lack of a showing of good and sufficient reasons why the "affidavit or other evidence filed" was necessary and was not earlier filed. 37 CFR §1.131 provides that a prior invention may not be established if the rejection is based upon a statutory bar. In the Office Action of March 16, 2006, the application was rejected under 35 U.S.C. §102(e) on the grounds of anticipation by Deal, and it is understood that this represented a statutory bar, so that it would not have been possible

to establish priority of invention with respect to the Deal published patent application US 2005/0044011 A1 by a Declaration under 37 CFR §1.131. It is respectfully submitted that this a good and sufficient reason why the Declaration under 37 CFR §1.131 and evidence was not submitted prior to the response of October 25, 2006 to the Office Action of August 25, 2006. It is further respectfully submitted that the Declaration under 37 CFR §1.131 and evidence submitted was necessary to establish priority of invention with respect to the Deal published patent application US 2005/0044011 A1. Applicant therefore requests that the Declaration and evidence submitted in the response of October 25, 2006 to the Office Action of August 25, 2006 should be considered.

In the Advisory Action of November 28, 2006, the Examiner also indicated that the evidence submitted was insufficient to establish diligence from a date prior to the date of reduction to practice of the Deal reference to either a constructive reduction to practice or an actual reduction to practice. Specifically, the Examiner indicated that there was no explanation for the time period between August 11, 2003 and November 17, 2003. A Declaration of David G. Parkhurst is submitted herewith in further explanation of diligence between August 11, 2003 and reduction to practice of the invention.

Exhibit A submitted previously shows the powerpoint presentation file received by David G. Parkhurst on August 11, 2003, and Exhibit B submitted previously shows the email received by David G. Parkhurst on August 12, 2003 providing access to documents relating to reduction to practice of the invention. The Declaration of David G. Parkhurst further documents diligence in preparation of the application for constructive reduction to practice of the invention on the filing of the present application.

It is respectfully submitted that the Deal published patent application US 2005/0044011 A1 is unavailable as prior art under 35 U.S.C. §102(e). It is therefore respectfully submitted that Claims 1-6, 12-14, 16, 18-21, 27-32, 36, 38-41 and 43 are novel and inventive over Deal and "www.Lowes.com", and that the rejection of Claims 1-6, 12-14, 16, 18-21, 27-32, 36, 38-41 and 43 on the grounds of obviousness from Deal, published patent application US 2005/0044011 A1, in view of "www.Lowes.com" should be withdrawn.

Claims 7, 8, 15, 22 and 37 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Deal in view of "www.Lowes.com" and further in view of Gupta et al., which was cited as disclosing a system and method for graphically locating merchandise comprising in part an interactive display that provides a selection of language, and that disseminates both video and text information. It is respectfully submitted that the Deal published patent application US 2005/0044011 A1 is unavailable as prior art under 35 U.S.C. §102(e). It is thus respectfully submitted that Claims 7, 8, 15, 22 and 37 are novel and inventive over Deal, "www.Lowes.com" and Gupta et al., and that the rejection of Claims 7, 8, 15, 22 and 37 on the grounds of obviousness from Deal in view of "www.Lowes.com" and further in view of Gupta et al. should be withdrawn.

Claims 9-11 and 33-35 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Deal in view of "www.Lowes.com" and further in view of Heisler et al., which was cited as disclosing a method and system for complete design and identification of materials and tools for home improvement projects, including disseminating descriptions of tools and products available from the seller for use in specific phases of a project and instructional presentations regarding how to perform a specific phase of the project. It is

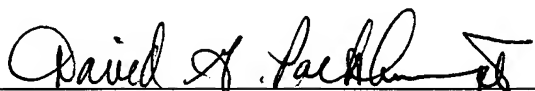
respectfully submitted that the Deal published patent application US 2005/0044011 A1 is unavailable as prior art under 35 U.S.C. §102(e). It is respectfully submitted that Claims 9-11 and 33-35 are novel and inventive over Deal, "www.Lowes.com" and Heisler et al., and that the rejection of Claims 9-11 and 33-35 on the grounds of obviousness from Deal in view of "www.Lowes.com" and further in view of Heisler et al. should be withdrawn.

Claims 23, 25, 26, and 44-46 were rejected under 35 U.S.C. §103(a) on the grounds of obviousness from Deal in view of "www.Lowes.com", and further in view of Gupta et al. and further in view of Heisler et al. It is respectfully submitted that the Deal published patent application US 2005/0044011 A1 is unavailable as prior art under 35 U.S.C. §102(e). It is respectfully submitted that Claims 23, 25, 26, and 44-46 are novel and inventive over Deal, "www.Lowes.com," Gupta et al., and Heisler et al., and that the rejection of Claims 23, 25, 26, and 44-46 on the grounds of obviousness from obviousness from Deal in view of "www.Lowes.com", and further in view of Gupta et al. and further in view of Heisler et al. should be withdrawn.

In light of the attached Declaration of David G. Parkhurst, the prior response, Declaration and exhibits, and the foregoing remarks, it is respectfully submitted that the application should now be in condition for allowance, and an early favorable action in this regard is respectfully requested.

Respectfully submitted,

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By: 
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DGP/rvw

Encls.: Return Postcard

Declaration of David G. Parkhurst

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